IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICITON

WRIT PETITION NO.8207 OF 2006

M/s.Castrol India Limited .. Petitioner.

Versus

Union of India & Others .. Respondents.

Mr.M.H. Patil for the petitioner.

Mrs.S.V. Bharucha for the respondents.

CORAM : H.L. GOKHALE, &
J.P. DEVADHAR, JJ.

DATED : 13TH DECEMBER, 2006.

P.C. :

1. Heard Mr.Patil in support of this petition. Mrs.Bharucha appears for the respondents.

2. Rule. Rule made returnable forthwith. By consent of the parties taken up for final hearing.

3. The petitioner had furnished a bank guarantee through H.D.F.C. Bank for Rs.12.50 lakhs during the course of provisional assessment of their excise duty for the year 2003. The provisional assessment has been finalised and order-in-original has been passed on 28th November, 2006 whereby the respondent No.3 has lodged their claim with the bank for encashing the bank guarantee by his letter dated 29th November, 2006.

4. The petitioner has a remedy of filing an appeal under Section 35 of the Central Excise Act, 1944 which it can file within 60 days and also apply for stay of the impugned order in original. Section 35F provides that a party against whom such duty is levied can apply for an order not to insist on this deposit on the ground of undue hardship. Mr.Patil submits that this remedy will become infructuous if the bank guarantee is allowed to be encashed in the meantime. He has drawn our attention to the Excise Manual published by the Central Board of Excise & Customs and particularly instructions contained in Rule 1.3 of Part 3 thereof which is on recovery of duty. It provides that if a stay application is filed by the assessee against the order in original, no coercive action shall be taken to realise the dues till the disposal of the stay application. If the bank guarantee is encashed even before filing of the stay application, there will be no occasion for the petitioner to file any such stay application. It appears that the Officer has moved rather too fast and that led the petitioner to file this petition. The petitioner, therefore, has prayed in this petition that this communication/order dated 29th November, 2006 issued by the respondent No.3 be quashed and set aside.

5. Mrs.Bharucha, learned counsel appearing for the Revenue submitted that the Officer is taking necessary steps to realise the dues. Having seen the provisions of the Manual, however, she has left it to the Court to pass appropriate order.

6. In these circumstances, for the reasons stated above, we allow this petition and quash and set aside the communication dated 29th November, 2006 for the simple reason that any such high handed action on the part of the concerned Officer will render the remedy available under statute infructuous. The Officer must note that they must be vigilant in collecting dues but they should not take steps which will nullify the remedy which are otherwise available under the statute.

7. Rule is made absolute in terms of prayer clause (a) with no order as to costs.

8. The writ petition stands disposed of.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)